IN THE HIGH COURT OF JUDICATURE
AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

CHAMBER SUMMONS NO.530 OF 2006
IN
EXECUTION APPLICATION NO.339 OF 2005
IN
AWARD DATED 15.2.2005
AND
CHAMBER SUMMONS NO.533 OF 2006
IN
EXECUTION APPLICATION NO.209 OF 2005
IN
SUMMARY SUIT NO.2561 OF 2002
AND
CHAMBER SUMMONS NO.534 OF 2006
IN
EXECUTION APPLICATION NO.338 OF 2005
IN
AWARD DATED 15.2.2005

Payal Telefilms Pvt. Ltd. ...Applicant
Vs.
Reminiscent India Television Limited & Anr. ...Respondents

Mr. Paritosh Jaiswal with Mr. Ashutosh Gavnekar with Mr. Deepan Desai i/b. Kanga & Co. for Applicant
Ms. Zohra Shaikh i/b. Lambay & Co. for Respondent No.1

CORAM: SMT. ROSHAN DALVI, J.
DATED: 15TH FEBRUARY, 2007

P.C.

1. The Applicant is the Decree Holder in respect of 3 decrees passed by this Court in favour of the Applicants. Pending the

litigation Respondent no.1 conveyed the land specified in the registered Deed of Conveyance dated 27th April, 2005, Exhibit-A to the Chamber Summons of Respondent No.2. The Conveyance Deed shows the total consideration of Rs.6 Crores for the property conveyed. Part of this consideration amounting to Rs.2.53 Crores has been paid. Balance sum of Rs.2.45 Crores was to be paid within 6 months of obtaining vacant possession from the Licensee of the portion of the property being the 3rd floor of the premises conveyed. The Respondent No.1 covenented to obtain vacant possession within 6 months of the execution of the conveyance under clause (b) of the conveyance. Respondent No.1 failed to obtain vacant possession. Hence, Respondent no.2, who has taken out this Chamber Summons, has applied for leave of the Court to obtain vacant possession.

2. It is the contention of the Respondent No.2 that the default of Respondent No.1 in obtaining vacant possession has resulted in the right of Respondent No.2 to obtain such vacant possession without making payment of the balance amount showing payable in the conveyance. Under clause (d) of the Conveyance Respondent no.2 was to make payment of the balance amount after the Respondent No.1 complied with the condition in Clause (b) regarding obtaining vacant possession of the 3rd floor premises within 6 months

of the execution of the conveyance.

3. Clause (b) and (d) of the Conveyance need to be reproduced to understand the intent of the parties. They run thus :

> ***"(b)*** *it will be the sole responsibility and obligation of the Vendor to obtain the peaceful and vacant possession of the third floor premises from the Licensee and hand over the same to the Purchasers within 6 months from the execution hereof,*
>
> ***(d)*** *as a guarantee for the performance by the Vendors of what is stated in (b) above, the Purchasers' obligation to pay the balance sum of Rs.2,45,00,000/- (Rupees two crores forty five lacs only) will be only after the Vendors complying with conditions referred in (b) above and not otherwise."*

4. The transaction relates to the immovable property. Time is not made essence of the contract specifically. It is presumed not to be of essence between the parties.

5. It can be seen that the Applicant has obtained 3 decrees which require to be executed. Respondent No.2 has been conveyed the property shown in the Conveyance Deed dated 27th April, 2005. Respondent No.2 deserves to get vacant

possession of property conveyed to them. Since Respondent No.1 has failed to comply with the specific requirement of clause (d) of the Conveyance, the Respondent No.2 has taken out this Chamber Summons for leave to negotiate with the Licensee on the 3rd floor premises of the property conveyed. Permission/leave can be given to Respondent No.2 only subject to Respondent No.2 satisfying the Applicant's decree for that amount in the above execution proceeding. Hence, following order :

O R D E R

(i) The Chamber Summons is made absolute in terms of prayer (a) subject to and upon Respondent No.2 depositing in Court Rs.2.45 Crores payable by Respondent No.2 as per clause (b) of the Conveyance. From the amount is so deposited, the Applicant's 3 decrees shall be satisfied. If any amount remains after satisfying those decrees, Respondent No.2 shall be entitled to withdraw the said amount.

(ii) Chamber Summons disposed of. NOC.

(SMT.ROSHAN DALVI, J.)